

Chander Bahadur Vs. the State

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Court : Delhi

Decided On : Feb-10-1997

Reported in : 1997IIAD(Delhi)353; 1997CriLJ2195; 1997(2)Crimes178; 66(1997)DLT570

Judge : Mohd. Shamim, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376 and 506

Appeal No. : Criminal Appeal No. 37 of 1996

Appellant : Chander Bahadur

Respondent : The State

Advocate for Def. : Mrs. Santosh Kohli, Public Prosecutor

Advocate for Pet/Ap. : Mrs. Meena Chaudhary Sharma, Adv

Judgement :

1. This appeal is directed against the judgment and order dated October 7, 1995 and October 9, 1995 whereby the convict/appellant (hereinafter referred to as the appellant in order to facilitate the reference) was found guilty under Section 376 of the Indian Penal Code and was sentenced to undergo RI for four years and to pay a fine of Rs. 1000/-. In case of his failure to clear the fine he was further sentenced to undergo RI for one month. The appellant was further sentenced to undergo RI

for one year under Section 506 IPC. Both the sentences were to run concurrently.

2. Brief facts which led to the present appeal are as under : that the appellant had sexual intercourse with Smt. Promila (hereinafter referred to as the prosecutrix) against her will and without her consent on July 2, 1994 at about 9.00 a.m. at the hut belonging to her situate at A-9 Block, DDA Park, East Patel Nagar, New Delhi. The appellant while doing so is alleged to have threatened the prosecutrix with death also.

3. Learned Additional Sessions Judge after the appraisal of oral as well as documentary evidence came to the conclusion that the prosecution had succeeded in bringing home the guilt to the appellant under Sections 376 and 506 IPC and sentenced him to undergo RI for four years with a fine of Rs. 1000/- under Section 376 IPC. In case a default of payment of fine the appellant was further directed to undergo RI for one month. The appellant was also sentenced to undergo RI for one year under Section 506 IPC. Aggrieved and dis-satisfied with the same the appellant has approached this Court.

4. Learned counsel for the appellant, Mrs. Meena Chaudhary Sharma, has contended that there is absolutely no evidence worth the name on record against the appellant. The learned lower Court thus fell into a grave error by coming to the conclusion that the appellant was guilty under Sections 376/506 IPC. The entire prosecution evidence is replete with material contradictions. The appellant was thus entitled to an order of acquittal.

5. Learned PP, Mrs. Santosh Kohli, on the other hand, has urged that the prosecution has successfully brought home the guilt to the appellant. Thus according to her the learned Additional Sessions Judge was very much justified in finding the appellant guilty.

6. I have heard the learned counsel for the appellant and the learned PP at sufficient length and have very carefully examined their rival contentions and have given my anxious thought thereto.

7. It has been urged for and on behalf of the appellant that admittedly the doctor on medical examination did not find any mark of injury on the body of the prosecutrix. There was neither a bruise nor an abrasion on her person. This goes to show that the prosecutrix did not resist the appellant in his alleged attempt to ravish her (vide statement of PW 2 Dr. B. N. Narang).

8. Furthermore, according to the learned counsel for the appellant it is in the statement of PW 4 Smt. Promila on being cross-examined that in case she cried inside her jhuggi the people outside could hear her. This fact is further borne out from the site plan of the hut which has been placed on the file of the Court of Session (vide Ex. PW 7/B). It shows that by the side of the place of occurrence there is an open land and there is a road. There is a telephone office towards the North of the said road and thereafter there is a road. Thus if the prosecutrix had raised an alarm the same would have been heard by a large number of persons. Admittedly it was morning time. The incident is alleged to have taken place at 9.00 a.m. Hence there must have been quite a large number of persons available around the place of occurrence. It is further in the evidence of PW 4 Smt. Promila that the appellant did not beat her. He simply threatened her. This again goes to show that no force was used.

9. There is another aspect of the matter. According to the CFSL report semen was detected on the petticoat of the prosecutrix. This is some thing very strange inasmuch as according to the prosecutrix she is alleged to have washed her clothes. If it was so it is surprising as to how the semen was even then found on her petticoat. Furthermore, according to the statement of the prosecutrix and her husband the petticoat was of red colour whereas the petticoat which was produced with semen stains thereon was of maroon colour. This again casts a suspicion with regard to the case of the prosecution (vide CFSL report Ext. PW 7/C).

10. Moreover, there is absolutely no evidence on record to substantiate the case of the prosecution that the semen which was detected on the petticoat of the prosecutrix was that of the appellant. Admittedly the prosecutrix is a married lady. Thus there is nothing strange if semen was detected on the petticoat of the prosecutrix.

11. The incident is alleged to have taken place at 9.00 a.m. on July 2, 1994 whereas the FIR was lodged at 7.50 p.m. It is in the statement of PW 5 Shri Ram Prakash that when he returned to his hut and met his wife i.e. the prosecutrix he did not straightaway go to lodge the FIR. He prior to the lodging of the same went to consult Shri P. P. Grover, Advocate with whom he was working as a driver. Thus this Court feels that there is a considerable delay in lodging the FIR and the same was lodged after due deliberations and consultations.

12. Considering the above facts and circumstances this Court is of the view that the prosecution has failed to bring home the guilt to the appellant beyond any shadow of doubt. The appellant is thus entitled to succeed. The appeal is accepted. The impugned judgment and order of the learned Additional Sessions Judge are set aside. The appellant be set at liberty at once if not required to be detained in any other case.

13. Appeal allowed.